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October 31, 2002

VIA ELECTRONIC MAIL AND ELECTRONIC SUBMISSION

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* of Virgin Mobile USA, LLC

In the Matter of Federal-State Joint Board on Universal Service CC Docket No. 96-45; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms CC Docket No. 98-171; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 CC Docket No. 90-571; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size CC Docket No. 92-237 ,NSD File No. L-00-72; Number Resource Optimization CC Docket No. 99-200; Telephone Number Portability CC Docket No. 95-116; Truth-in-Billing and Billing Format CC Docket No. 98-170

Dear Commissioner Abernathy:

Recently, Virgin Mobile USA, LLC (“Virgin Mobile”) scheduled several meetings with the Commission’s Eighth Floor and the Wireline Competition Bureau Front Office to allow the Commissioners an opportunity to meet with Virgin Mobile’s CEO, Dan Schulman, on the issue of how the Commission’s proposed “connection-based approach” to Universal Service Fund (“USF”) collections negatively affects Virgin Mobile’s business model. Due to scheduling conflicts, we were unable to meet with your office, although your office had graciously offered to schedule earlier meetings with Virgin Mobile. By this letter, and the attached presentation, which was used in the other Commissioner meetings, Virgin Mobile provides an overview of the topics Virgin Mobile presented to the other Commissioner’s offices to provide your office with

some context and the concerns that Virgin Mobile has with the Commission's current USF proposals.

Virgin Mobile is a new-entrant in the pre-paid wireless market, providing flat-rate pricing noticeably free of taxes, pass-throughs, surcharges, and extra-fees (such as increments for collecting USF payments). A connection-based USF collection policy would be detrimental to the prepaid wireless industry and consumers and, thus, urges a retention of the current progressive, interstate revenue-based USF assessment policy, including a wireless "safe harbor" set no higher than the 20% – 25% range.

In particular, Virgin Mobile believes its ability to continue to offer consumers transparent pricing, free of surcharges, pass-throughs, and extra charges, would be greatly jeopardized by the proposed "connection-based" changes in the USF contribution system. Virgin Mobile wants to maintain its "customer-friendly" simple price structure, but it believes that certain proposals, including the connection-based USF system proposed by CoSUS, could make such a structure particularly unfair to its low volume customers and impossible to execute profitably. Virgin Mobile recognizes that the Commission is properly concerned with a declining pool of USF revenues and numerous customer complaints about excessive surcharges for USF collections, but, in their current forms, the CoSUS and similar proposals are not a fair fix for these problems.

Virgin Mobile's business model contemplates USF and other state, federal, and local taxes and fees. The customer doesn't see them, but Virgin Mobile pays them. However, in Virgin Mobile's view, the connection-based proposal from CoSUS, in particular (whose *raison d'être* appears to be unlawfully to keep IXC's from having to make USF contributions and instead to make consumer and wireless customers bear a disproportionate share of the USF burden), would require such a substantial increase in the federal USF assessments on wireless carriers that Virgin Mobile could have to dramatically change its all-inclusive pricing strategy, eliminating from the market an innovative service option that has gained rapid consumer acceptance. Virgin Mobile would have to either find some way of passing through the USF charges to its customers without alienating them forever, or find new capital from investors eager to have their investments immediately forwarded to the government. Neither is an appealing option to the company.

If the Commission adopts a "connection-based" methodology, the effect on prepaid wireless providers will be particularly egregious. Prepaid wireless carriers typically have lower minutes of use per subscriber relative to post-paid carriers. These customers typically generate less revenue per customer than do post-paid customers, and many never make any interstate calls at all. In such cases, the regressive nature of the "connection-based" proposals is particularly egregious.


If the Commission goes to a connection-based plan, to mitigate the regressive impact of this approach, the Commission must consider the manner in which "users" are defined. Because, unlike wireline or post-paid carriers, a prepaid wireless carrier does not necessarily have an ongoing contractual relationship with its customers from one month to the next, and because its

customers do not pay for the previous month in arrears, but pay only “as they go,” the Commission should limit the definition of active user to include only those prepaid wireless users who originate or terminate an interstate call within a given month. In effect, for USF purposes, a “pay-as-you-go” prepaid wireless customer would be a “connect-as-you-go” interstate customer, electing whether to have the interstate service in a given month based on usage, just as he or she elects whether to continue to have Virgin Mobile service in a given month. While Virgin Mobile still believes that this approach would be unfairly over-inclusive, since even one minute of interstate use in a month (resulting in revenue of far less than even the approximately fifty cents assessed under Sprint’s proposal) would trigger USF contribution, the clarified definition would ameliorate the adverse, regressive impact of the connection-based approach for the lowest-volume users. This approach would at least limit the possibility that prepaid wireless carriers will effectively pay USF on phones that generate no revenue to the company. Moreover, this approach helps place prepaid wireless on par with pre-paid wireline, which is exempt from USF contributions under the proposed rule.

Virgin Mobile therefore urges the Commission, to the extent it does adopt a connection-based USF plan, essentially to adopt a modification of the proposal originally proposed by Sprint. The Sprint approach properly recognizes that wireless service is intrinsically different from wireline service, and that it should be treated differently. The Sprint proposal, however, should be specifically clarified to define the user with a contribution-eligible connection as a user who actually has interstate traffic in a 30-day period. Such an approach assists in lessening the competitive imbalance of the connection-based proposals as between prepaid wireless and both post-paid wireless and prepaid wireline services. It also helps ensure that affordably-priced mobile service continues to become available to even low-volume users for whom wireless is no longer a luxury, but an essential life-line, including the many first-time wireless customers who have so enthusiastically responded to the unique Virgin Mobile value offering.

Pursuant to Commission rule 1.1206, an original and one (1) copy are enclosed with this filing. If you have any questions regarding this submission, please contact the undersigned.

Respectfully submitted,



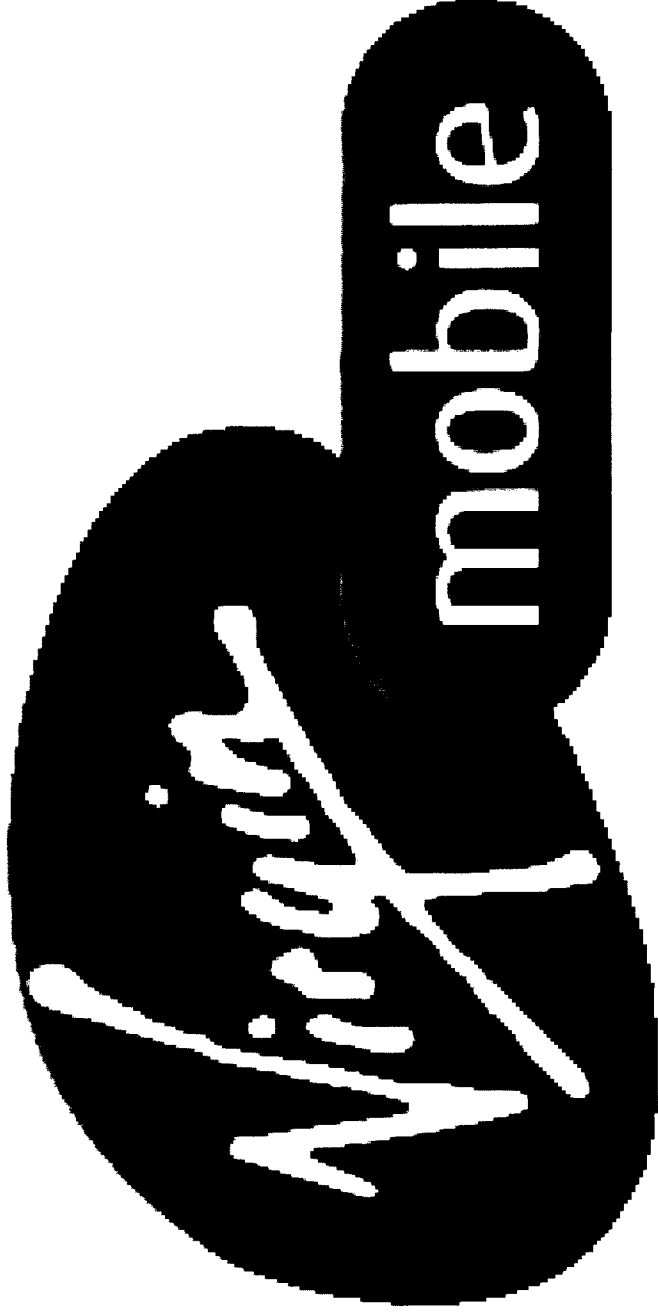
Helen E. Disenhaus
Douglas D. Orvis II

Counsel for Virgin Mobile USA, LLC

Enclosure

cc: Ms. Marlene H. Dortch, Secretary, Via Electronic Filing
Mr. Matthew Brill

Federal Communications Commission
October 30, 2002



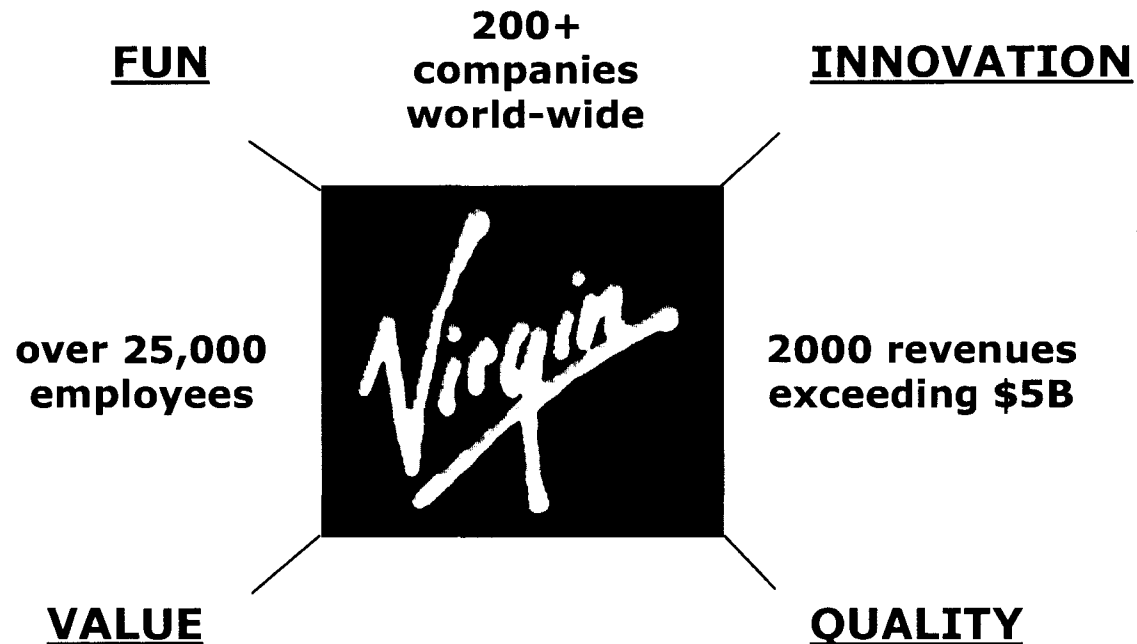
Agenda

Introduction to Virgin Mobile USA

Who Subscribes to Prepaid Wireless?

**Making a Connection-Based
Approach Reasonably Fair to All
Prepaid Wireless Customers
Requires Limiting, for USF
Purposes, Definition of
a “Connected” Customer to one
Making an Interstate Call, and Not
Double-Charging Wireless.**

The Virgin Group



"The Virgin brand is all about delivering great value to consumers, while constantly being innovative, modern and fun in all we do."

– Richard Branson

Virgin Mobile USA, LLC

50/50 Joint Venture:

**Bluebottle USA Holdings, LP,
a Virgin Group entity**

**Sprint Ventures Inc.,
an affiliate of Sprint Spectrum, LP
(Sprint PCS)**



Wireless Market Full of Confusing Offers

Overly Complex

"The upshot for consumers has been wildly mixed. Competition has cut rates and boosted minutes of usage. But the plethora of plans and myriad restrictions and charges can make it impossible to figure out the best offer or track whether rates are being accurately applied."

-Wall Street Journal, 2002

Confusing Economics

"Not all minutes are created equally; there are 'anytime' minutes and off-peak minutes, which can be used only on nights or weekends. While 300 anytime minutes may sound like a lot, that only amounts to roughly 10 minutes a day, which won't cut it for many users. But splurging for a bigger bucket may not make sense, either, because you can't carry minutes over from month to month."

-USA Today, 2001

Poor Value

"Many customers are discovering that the new technology (wireless) comes with a host of old-fashioned problems: confusing and misleading advertisements, complicated payment plans, indecipherable bills, unexpected charges and poor service."

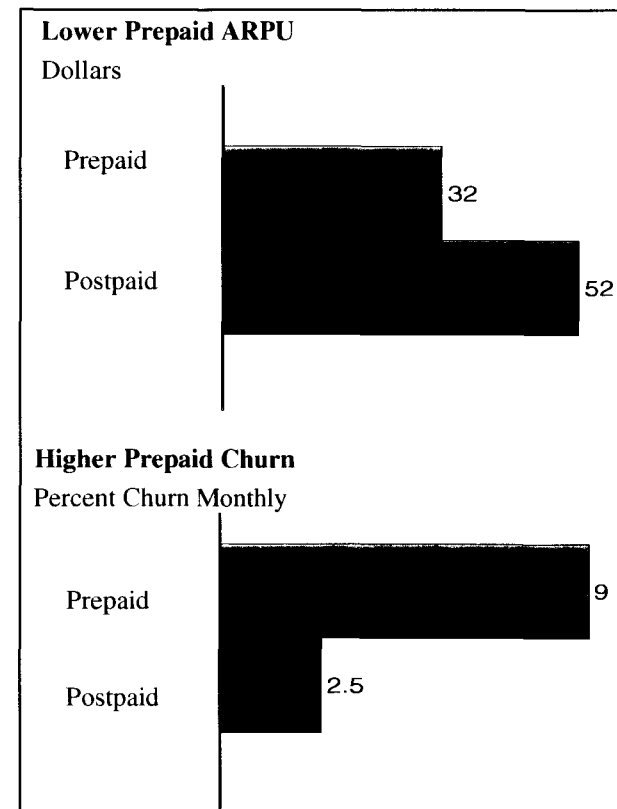
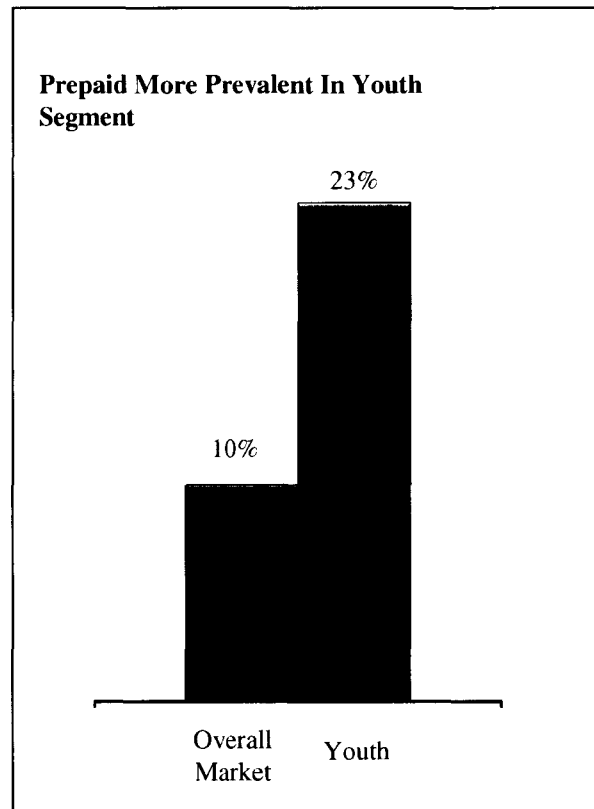
-Washington Post, 2001

Not Tailored to Youth

"Prepaid plans, which are popular in Europe, often cost about 50 cents a minute in the United States. For month-to-month plans, many carriers require a deposit."

-New York Times, 2002

Youth Market Prefers Prepaid – But Prepaid Market Presents Challenging Economics for Incumbents



Source: Yankee Group, IDC, Knowledge Networks, Strategis Group

VM USA's Approach To US Wireless

- **Provide a Fresh Alternative to Post-Paid**
 - **Pay Only for Minutes You Want**
 - **No Long-Term Commitment**
 - **Innovative Pricing Structure: "The More You Use, the Cheaper it Gets"**
 - **The Price is the Price Whenever You Call, Wherever You Call, with No surprises**
 - **No Additional Fees on Activation, Voice Mail, Call Waiting, and Caller ID**
- **Provide a Fresh Alternative to Previous Pre-Paid Products**
 - **Not Just for the Credit Challenged**
 - **Attractive Product - Virgin Xtras**

Prepaid Wireless Is Different

- **Prepaid customers tend to be lower usage customers than post-paid - no minimums**
- **No regular billing cycle -- VMU's \$20 card can be used for 1 day or 3 months**
- **Names and addresses optional**
- **All-inclusive pricing; no pass-through of USF, E-911 surcharges; total cost quoted in price per minute**
- **Heavily used for intrastate and exempt services (e.g., Virgin Xtras)**
- **Emphasis on flexibility**

Connection-Based User Definition Complicates Prepaid Wireless Pricing

- A low usage consumer would pay significantly more in USF payments on a per minute basis, and could pay even if they had *no* interstate traffic.
- Proposals require, *e.g.*, 1 USF payment for a \$20 card used immediately for interstate calls, but 3 USF payments (representing 15% of card revenues) for the same \$20 card used for only intrastate calls over 3 months (without additional VMU revenues).
- When average-usage pricing is unfair to low-usage, intrastate customers, “one rate” pricing is jeopardized.

Fix Connection-Based USF Proposals For Fairness to Prepaid Wireless Customers

- ***Unless the prepaid user definition is fixed, low volume, local users unfairly must subsidize USF of heavy interstate users!***
- ***When the wireless connection fee is set even higher to compensate for the unlawful exemption of IXC's, the problem is exacerbated.***
- ***User (connection) definition for prepaid wireless therefore must be limited to interstate callers, and wireless cannot be double-charged.***

Definition of Prepaid Wireless “Connection” Requires Clarification

- **Prepaid wireless “connection” (or number) should be defined as a handset actually used for interstate calls that month.**

CoSUS and JT SBC/BellSo. Proposals Unfair and Anti-Competitive

- **Wireless pays more than its fair share in most connection-based proposals.**
- **Discrimination against wireless especially hurts low volume consumer customers.**
- ***Intrastate* wireless traffic under CoSUS gets double assessment, under both state and federal universal service programs, while IXC traffic unlawfully exempted.**
- **CoSUS Proposal Likely Unlawful as Over- and Under-Inclusive**
- **Prepaid wireless particularly harmed; prepaid long distance wireline effectively CoSUS-exempt**

Sprint's Contribution-Based USF Proposal Is Best Compromise if Prepaid Wireless User Defined Correctly

- **Sprint proposal properly accounts for the differences between wireless and wireline phones in terms of their percentage of interstate access.**
- **It is appropriate to treat wireless and wireline phones differently based on the differences in the industries.**
- **Wireless users pay for *mobility*, not *connections*, and low-volume users need mobility too.**